Chicago-Kent Law Review

Volume 26 | Issue 1 Article 7

December 1947

Public Law - Survey of Illinois Law for the Year 1946-1947

Chicago-Kent Law Review

lem is likely to develop as to how it can be given operative effect in the other jurisdiction particularly since ancillary proceedings can hardly be based thereon. That problem was resolved, in *In re Barrie's Estate,*[69] by granting permission to the legatees to withdraw the original rejected instrument for the purpose of offering it for probate in a foreign state. The authority for such an order was said to rest upon the absence of any contradictory provision in the Probate Act[70] and the inherent power of every court to permit the removal of original files and exhibits.[71]

Two sections of the Probate Act were amended during the year. Section 38 now adds real estate sales in proceedings by a guardian or conservator under the act to the types of sales in which the owner may bring an action to acquire an outstanding inchoate dower interest.[72] Section 322 was also changed so that the conservator or guardian is no longer automatically entitled to administer the estate of his deceased ward but must secure new letters of administration.[73]

VII. PUBLIC LAW

ADMINISTRATIVE LAW

The decision of the Supreme Court in *Deutsch* v. *Department of Insurance*[1] furnishes an interesting commentary on the treatment to be accorded in a court of review upon informal administrative procedure. The applicants there concerned made due and proper application for a license to engage in the small loan business. The application was accompanied with an investigation fee, an annual license fee and a statutory bond, all in conformity with the statute.[2] The Department was then required to make an investi-

[69] 331 Ill. App. 443, 73 N. E. (2d) 654 (1947).

[70] Ill. Rev. Stat. 1947, Ch. 3, § 235, requires that all wills admitted to probate shall remain in the custody of the clerk of the court, but is silent as to the disposition to be made of a rejected will.

[71] Lee v. Hicks, 4 Ill. (3 Scam.) 169 (1841).

[72] Laws 1947, p. 1, S. B. 225; Ill. Rev. Stat. 1947, Ch. 3, § 189.

[73] Laws 1947, p. 1, S. B. 213; Ill. Rev. Stat. 1947, Ch. 3, § 476.

[1] 397 Ill. 218, 73 N. E. (2d) 304 (1947).

[2] Ill. Rev. Stat. 1947, Ch. 74, § 19 et seq.

gation and, if it appeared that the applicants were proper persons, that public convenience and necessity would be served, and that the applicants had sufficient assets, a license should then be issued. If not, the Department was to retain the investigation fee but was to return the other deposits and give notice of its decision. No application was to be denied, however, until opportunity for hearing had been provided and a proper record thereof kept,[3] upon which adverse determination review might be had in the circuit court upon the record so made together with the transcript of testimony and the exhibits, if any.[4] The procedure before the Department did not achieve the formality contemplated by the statute but consisted of the return of the deposits made and a letter from the Supervisor of Small Loans advising that, on the basis "of the economic need" in the community, the convenience and advantage of the neighborhood would not be served.[5]

The applicants appealed to the circuit court and filed with the clerk thereof the correspondence received from the Department. The respondent appeared specially to quash the appeal, refused to plead after denial of its motion, and the matter was set for hearing. At that hearing, the applicants proved there was no licensee operating at the place in question or within a radius of nine miles thereof and otherwise showed themselves to be qualified, whereupon a decree was entered directing that a license be issued to them. The Department appealed from that order contending first that the action of the supervisor was not the action of the Department but this argument was rejected upon a theory somewhat analogous to that of apparent authority.[6] It then relied on the claim that no jurisdiction had been acquired because no transcript of the record had been filed, but again the court found that the Department was seeking to take advantage of its own default hence it could see no insuperable difficulty in accepting

[3] Ibid., § 22.

[4] Ibid., § 43.

[5] A second letter followed, but it was of no significance except that it was subsequently filed as part of the record.

[6] The court said, in that respect: "The situation presented here is the acme of administrative absolutism. It is with poor grace that appellant says the Supervisor of Small Loans Division was not acting for and in behalf of the Department of Insurance." See 397 Ill. 218 at 229, 73 N. E. (2d) 304 at 310.

the originals of the correspondence, etc., in lieu of copies. The court did indicate, however, that while the lack of a transcript did not deprive the trial court of jurisdiction it was necessary to reverse for the court should not have heard the case *de novo* but should have remanded with directions to the Department to prepare a proper transcript "with sufficient particularity to enable an intelligent judicial review."[7]

The court does not appear to pass definitively upon the scope of review permitted by the statute, which is regrettable, since that would seem to be a most significant aspect of the case. Section 25 of the Act[8] obviously contains language fraught with great difficulty insofar as the scope of review in Illinois is concerned. The review is referred to specifically as an "appeal" and the court consistently so refers to it. It is doubtful if the constitution would permit the delegation to the judicial department of jurisdiction over a true appeal from a proceeding intended to culminate in the issuance, or refusal to issue, of a license. It is difficult to believe that such function is judicial or even quasi-judicial.[9] If the statute contemplates a review of little broader scope than a common-law certiorari, then there would be question of its validity.[10] It would seem, however, that although the statute provides specifically that the review shall be "for the purpose of having the reasonableness or lawfulness of the order, decision or finding inquired into and determined," all clearly within the scope of certiorari, the court possesses a somewhat broader conception of the scope of review. It refers specifically to the language of Section 25 providing for the trial of the appeal "without formal pleading, but otherwise according to the rules relating to the trial of chancery suits, so far as applicable", and concludes as follows:

> The legislative intent reflected by the provision is that the court, upon appeal from orders relative to the administration or enforcement of the Small Loans Act, shall do more than merely review orders of the Department of Insurance. Upon

[7] 397 Ill. 218 at 229, 73 N. E. (2d) 304 at 311.
[8] Ill. Rev. Stat. 1947, Ch. 74, § 43.
[9] City of Aurora v. Schoeberlein, 230 Ill. 496, 82 N. E. 860 (1907).
[10] Bartunek v. Lastovken, 350 Ill. 380, 183 N. E. 333 (1932).

> appeal, the circuit court is vested with authority to determine whether a license should be granted or denied, its determination being based upon the record of the proceedings before the Department, together with evidence heard upon the appeal.[11]

It would thus seem that the review, believed by the court to be contemplated by the Act, lies somewhere between a true appeal and a certiorari proceeding. It is to be expected, therefore, that the court will have ample opportunity to pass specifically upon the constitutionality of this type of review in subsequent proceedings, whether under this or similar statutes or under the provisions of the Administrative Review Act.[12]

The case of *People ex rel. Siegel* v. *Rogers*[13] presents an interesting twist upon the well-recognized doctrine that an individual must be a *de jure* officer in order to use mandamus proceedings to compel his reinstatement in office.[14] The case required an interpretation of certain provisions of the Fire and Police Commissioner's Act[15] forbidding, in substance, the removal except pursuant to the provisions of the act, of an employee of a fire or police department who had held his position for more than a year preceding the effective date of the act. Apparently, petitioner had been appointed by the president of the village but the appointment had not been confirmed by the board of trustees. His position was that the provisions of the act referred to were intended, by the legislature, to constitute public servants falling within its provisions *de jure* officers. In rejecting this contention, the Appellate Court relied upon the Moon[16] and Armspach[17] cases, and distinguished the Reed case,[18] relied upon by the relator, upon

[11] 397 Ill. 218 at 231, 73 N. E. (2d) 304 at 311.

[12] Ill. Rev. Stat. 1947, Ch. 110, § 264 et seq.

[13] 329 Ill. App. 430, 69 N. E. (2d) 108 (1946), reversed in 397 Ill. 187, 73 N. E. (2d) 316 (1947).

[14] People v. Board of Review of Cook County, 351 Ill. 301, 184 N. E. 325 (1933); McNeill v. City of Chicago, 212 Ill. 481, 72 N. E. 450 (1904).

[15] Ill. Rev. Stat. 1947, Ch. 24, § 14—11.

[16] Moon v. Mayor of City of Champaign, 214 Ill. 40, 73 N. E. 408 (1905).

[17] People ex rel. Mitchell v. Armspach, 314 Ill. App. 573, 41 N. E. (2d) 781 (1942), abst. opin.

[18] Reed v. City of Peoria, 318 Ill. App. 271, 47 N. E. (2d) 863 (1943).

the ground that in that decision the petitioner had been found to be, in fact, a *de jure* officer. The Supreme Court, however, granted leave to appeal and reversed that holding on the ground that to decide otherwise would render nugatory the curative operation of the provision in question, a provision enacted with a purpose to cure the evils noted in the earlier cases.

A somewhat more liberal attitude toward the writ of mandamus is found in *People ex rel. Caslin* v. *Geary*[19] wherein the court was confronted with the delicate problem of control of administrative discretion by means of such a writ. The petitioner there sought to compel his certification and appointment to the civil service position of deputy inspector in the department of weights and measures. Defendants unsuccessfully resisted the granting of the writ upon the contentions (a) that plaintiff had failed to show a clear legal right thereto, and (b) that issuance of the writ would create confusion, public inconvenience and embarrassment in the conduct of public business. In view of the frequency with which the courts succumb to these general arguments without any real examination of the facts and thus, in effect, sanction flagrant evasion of civil service laws, the skillful and courageous manner in which the court analyzed the facts in that case should not go unnoticed.

The essential facts were not in dispute. A civil service examination was held for the position in question and in due time the eligible list created thereby was posted. It contained twenty-six names and petitioner was listed in the twentieth place thereon. Thereafter, and up to the time of trial, fourteen certifications and appointments were made, thirteen being persons ahead of the petitioner.[20] Of the remaining six, three had waived certification because of military service, one filed a waiver because he was "frozen" in a position in a defense plant, and one was on extended leave of absence. The last of these individuals, nineteenth on the eligible list, had not been certified but he was then in military

[19] 330 Ill. App. 172, 71 N. E. (2d) 96 (1947).

[20] The fourteenth appointee was No. 23 on the list, but the court commented on the fact that the record did not disclose why he was appointed instead of the petitioner.

service although prior thereto he had worked as a temporary employee in the department. The evidence further disclosed that five temporary employees occupied positions, they being chiefly women and spouses of regular appointees away on military service.

In addition to the general grounds above mentioned, the defendants also contended that the use of temporary employees was justified because of the greater suitability of women for certain types of shopping and that it was proper to use temporary help to hold jobs for those in military service. While conceding the validity of a distinction based upon sex and the propriety of creating separate eligibility lists for men and women,[21] the court rejected the first of these contentions by indicating that separate lists had not been created; that no specification of sex was made in the requisition from the department head; that men and women deputies were employed interchangeably without regard to sex; and that Section 10 of the Civil Service Act specifically provides that in making certification sex shall be disregarded "except when some statute, the rules of said commission, or the appointing power specifies sex."[22] The other contention was answered by the statement that there was no statutory justification for using temporary employees to hold jobs for those in military service but that, to the contrary, both the statute and the rules of the commission made special provision for the reemployment of returning veterans.

A part of the opinion is so emphatic that it will well bear repetition. Among other things the court said:

> The statute necessarily took from the department heads the arbitrary power to make appointments; under the statute they must fill the positions under their jurisdiction with personnel certified to them by the civil service commission. We think these fundamental concepts of civil service, as expressed by the legislature, furnish ample reason for disapproval of the course employed in this proceeding. To hold

[21] People ex rel. Arden v. Gallagher, 160 App. Div. 27, 144 N. Y. S. 900 (1913).
[22] Ill. Rev. Stat. 1947, Ch. 24½, § 12.

> that the appointing officer has the right to make temporary appointments when there is none of the sex he designates on an eligible list, would throw open the door to abuse and circumvention of the Civil Service Act, the fundamental purpose of which is to improve public service. The foundation principle of the Act is that appointments to municipal offices or employments must be made according to merit and fitness to be ascertained by competitive examinations.[23]

If that attitude is maintained, deliberate abuse and disregard of civil service laws is not likely to go unchecked hereafter.

Dealing as it does with the problem of veteran preference in civil service, the case of *People ex rel. Brady* v. *Gregory*[24] is particularly timely. In that decision, the Appellate Court held that the amendment of 1943 to Section 10½ of the Cities Civil Service Act,[25] extending credit for military service in civil service promotional examinations to include such service rendered in World War II, does not apply to candidates who have taken promotional examinations and whose names appear on posted eligible lists issued prior to the enactment of the amendment. The opinion covered twelve consolidated and substantially identical mandamus cases each seeking promotional credit on earlier lists for military service performed after posting. Motions to strike the several complaints were overruled in the trial court and, when the defendants elected to stand on their motions, the requested writs were awarded. At the time of reversing, the Appellate Court cited with approval from *O'Brien* v. *Frazier*,[26] a case dealing with substantially the same problem in connection with veterans of World War I. Despite an indicated desire to extend all possible benefits to veterans, it held that the statute was clear and contemplated only two types of advantage, to-wit: (1) actual preference

[23] 330 Ill. App. 172 at 179, 71 N. E. (2d) 96 at 99.
[24] 331 Ill. App. 259, 73 N. E. (2d) 1 (1947). Leave to appeal has been denied.
[25] Ill. Rev. Stat. 1947, Ch. 24½, § 49.
[26] 228 Ill. App. 118 (1923).

in securing appointments to civil service positions, and (2) additional credits in *examinations for promotion.*[27]

The Appellate Court decisions in *People ex rel. Fosse* v. *Allman*[28] and the much publicized case of *Cartan* v. *Gregory*[29] add nothing new to the law, but do serve as practical applications and reaffirmations of the earlier decision of the Supreme Court in *Funkhouser* v. *Coffin,*[30] also a civil service case. In that case the court held that, on review by certiorari, the existence of all jurisdictional facts must appear affirmatively in the record and that there can be no indulgence in presumptions of jurisdiction so that the record not only has to show that the board acted upon evidence but it also has to contain the testimony upon which the decision was based, in order that the court might determine whether there was any evidence fairly tending to sustain the order. As that doctrine expands the actual scope of review by common law certiorari in proportion to the expansion of the concept of jurisdictional facts, it is worthy of note that in Illinois such concept had become quite broad in civil service cases.[31]

MUNICIPAL CORPORATIONS

While there were no monumental decisions in this branch of public law during the period of this survey, some cases are worthy of more than passing comment. For example, the case of *People ex rel. Touhy* v. *City of Chicago*[32] concerned the validity of what is commonly referred to as the Municipal Slum Clearance Act[33] there attacked on the ground that it permitted the taking of private property for other than a public use. As the objective of the statute is to rehabilitate or redevelop blighted and slum areas,

[27] See also People ex rel. Hansen v. Collins, 266 Ill. App. 24 (1932), affirmed in 351 Ill. 551, 184 N. E. 641 (1933), and People ex rel. McCabe v. Gregory, 328 Ill. App. 513, 66 N. E. (2d) 451 (1946), leave to appeal denied.

[28] 329 Ill. App. 296, 68 N. E. (2d) 203 (1946).

[29] 329 Ill. App. 307, 68 N. E. (2d) 193 (1946), noted in 14 U. of Chi. L. Rev. 270.

[30] 301 Ill. 257, 133 N. E. 649 (1922).

[31] For an interesting and enlightening commentary upon this phase of the Cartan case, see 14 U. of Chi. L. Rev. 270.

[32] 394 Ill. 477, 68 N. E. (2d) 761 (1946). Murphy, J., dissented without writing an opinion.

[33] Ill. Rev. Stat. 1947, Ch. 24, § 23—103.1.

it was decided that the land to be acquired would be acquired for a public rather than a private purpose hence justified the use of the power of eminent domain. Support for that decision was found in *Zurn* v. *City of Chicago*[34] which had upheld that portion of the Neighborhood Redevelopment Act[35] similarly permitting the use of eminent domain proceedings to acquire private property for use in the building of housing projects.

Zoning produced its share of litigation. The case of *2700 Irving Park Building Corporation* v. *City of Chicago*[36] was a suit brought to enjoin the enforcement of an amendment to a zoning ordinance under which the land of the plaintiff was re-zoned from an industrial use, the one for which purpose the plaintiff had planned to utilize it, to one for apartment building use. The court sustained the plaintiff's contention that there was no "reasonable connection between the rezoning of the plaintiff's property . . . and the public health, safety, comfort, morals and general welfare."[37] The significant factor in the case would seem to the court's lack of appreciation of the general spirit behind zoning, for it places the burden upon the municipality to show that there is a reasonable relationship between the ordinance and the police power whereas that burden should rest upon the party alleging the invalidity. At least, the court failed to give credence to the pronouncement, so often made, that the judgment of the city council as to the reasonable relationship of the ordinance to the general welfare is to be treated as conclusive if not shown to be erroneous.[38] Had the burden been placed on the plaintiff where it rightfully belonged, there is occasion to doubt that the decision

[34] 389 Ill. 114, 59 N. E. (2d) 18 (1945), noted in 24 CHICAGO-KENT LAW REVIEW 77. It is interesting to note that Justice Murphy dissented in that case and also the one under discussion.

[35] Ill. Rev. Stat. 1947, Ch. 32, § 550.1 et seq.

[36] 395 Ill. 138, 69 N. E. (2d) 827 (1946), noted in 14 U. of Chi. L. Rev. 718.

[37] 395 Ill. 138 at 151, 69 N. E. (2d) 827 at 833.

[38] As a matter of fact, within the same period, the court itself said: "A zoning ordinance is presumed to be valid. The burden is upon the one assailing such an ordinance to overcome this presumption." See DeBartolo v. Village of Oak Park, 396 Ill. 404 at 410, 71 N. E. (2d) 693 at 696 (1947), cert. den. — U. S. —, 68 S. Ct. 72, 92 L. Ed. (adv.) 20 (1947). In that case, the plaintiff sought to enjoin the city from enforcing a zoning ordinance which classified her property as a single residence use whereas she sought to utilize it as a multiple family residence.

would have been the same so it can only be pointed out that, as long as courts persist in "second-guessing" the zoning authorities, zoning in this state rests on an unsafe basis. The other zoning case, that of *Winnebago County* v. *Harrington*,[39] involved a non-conforming use. The defendants there had maintained an automobile repair shop on land which was subsequently zoned for agricultural purposes, part of the work being done in the open air. An attempt to construct a building over that portion of the land being utilized for outdoor repair work met with opposition but the court held that as the building would not be offensive to the community and would serve to conceal the repair work being done, thereby making it less objectionable, it was proper to deny an injunction against the proposed construction.

Two cases required interpretation of words used in municipal law. In the first, that of *City of Elmhurst* v. *Buettgen*,[40] the defendant was convicted of violating an ordinance prohibiting a person from pushing, propelling, or backing any vehicle over any sidewalk, curb or grading. He appealed on the ground that the ordinance was unconstitutional, claiming that to deny him the right to drive over the "sidewalk" would, in effect, deprive a landowner of the right of ingress and egress to his property. He argued that, if he could not propel a vehicle over a sidewalk, he could not enter his own property by way of a driveway which happened to intersect with a sidewalk. The court sustained the validity of the ordinance, however, holding that it did not prohibit access to property, hence was a reasonable and proper regulation. To achieve that result it became necessary to define the word "sidewalk." The court did so by saying: "While the private driveway of an owner of property abutting upon a street may be considered in a sense as part of the sidewalk, it would be absurd to presume that the term 'sidewalk' was used with such meaning in the ordinance in question. The word 'sidewalk' taken in its ordinary and general acceptation with regard to its general and popular use, does not include driveways."[41]

[39] 329 Ill. App. 344, 68 N. E. (2d) 619 (1946).
[40] 394 Ill. 248, 68 N. E. (2d) 278 (1946).
[41] 394 Ill. 248 at 253, 68 N. E. (2d) 278 at 282.

In the other case, that of *Wolbach* v. *Village of Flossmoor*,[42] it became essential to define the word "contiguous" as it appears in the statute allowing disconnection of property from municipal limits.[43] One requirement of that statute is that the property to be disconnected shall not, in whole or in part, be contiguous to that of any other municipality. The southwest corner of the land in question touched the northeast corner of an adjacent village so the meaning of the word "contiguous" became important. The court followed an analogy to be found in the decision in *Wild* v. *People ex rel. Stephens*[44] where it was held that parcels which touch at one corner are not contiguous within the meaning of a statute permitting the incorporation of contiguous property within municipal limits. The test of contiguity, therefore, seems to require that a person must be able to pass from one plot of land to the other without being obliged to step over a third.

Municipal tort liability was involved in *Scarpaci* v. *City of Chicago*[45] where the minor plaintiff claimed to have been injured when a metal stop sign, erected and maintained by the defendant, fell on him. Plaintiff's theory was that the injury resulted from a failure on the part of the municipal defendant to maintain its streets in a reasonably safe condition. The city defended on the ground that as traffic control is a governmental function it was immune from liability for any injury arising therefrom. While the court agreed with the premise of the defendant's argument it came to the conclusion that the breach of the obligation to keep its thoroughfares in a reasonably safe condition was the prime factor in causing the injury even though that breach grew out of the exercise of a governmental function, hence no immunity existed.[46]

[42] 329 Ill. App. 528, 69 N. E. (2d) 704 (1946). Leave to appeal has been denied

[43] Ill. Rev. Stat. 1947, Ch. 24, § 7—42.

[44] 227 Ill. 556, 81 N. E. 707 (1907).

[45] 329 Ill. App. 434, 69 N. E. (2d) 100 (1946). Brief mention might also be made of the decision in Hendriksen v. City of Chicago, 330 Ill. App. 141, 70 N. E. (2d) 848 (1947), wherein it was held that a municipal employee, serving as a fireman on a municipally owned tugboat, was entitled to the benefits of the Jones Act, 46 U. S. C. A. § 688, rather than the state workmen's compensation laws, for injuries arising out of his employment.

[46] Many small additions and amendments have been made to the Cities and Villages Act, but they are of limited interest so no comment is made thereon. For further particulars, see Laws 1947, pp. 380-638.

PUBLIC UTILITIES

The Public Utilities Act directs the Illinois Commerce Commission to require all utilities under its jurisdiction to comply not only with that act but also with any other applicable law.[47] It was argued, in *Illinois Central Railroad Company* v. *Commerce Commission*,[48] that as there is a statutory provision which requires railroads to build and maintain depots for the comfort of passengers and for the protection of shippers of freight in all towns on their lines having populations of two hundred or more,[49] the commission was right in denying a petition by the railroad company for permission to change an agency station into a non-agency station in charge of a caretaker in a given town. The Supreme Court nevertheless affirmed an order by the circuit court, setting aside the order of the commission, by saying that the requirement to maintain a depot did not necessarily involve the maintenance of an agent to operate it and that the depot would actually be "maintained" even though in charge of a caretaker.

In that same case, it was also held that there is no requirement that a railroad company as a whole must be operated at a loss before public convenience and necessity will authorize the closing of an agency station which is being operated at a loss. On this point, the court said:

> When the statute refers to public convenience and necessity it does not mean the one or more persons that may be benefited at a particular locality, but it means the public generally, and, in determining the true public convenience, the effect of the order upon the whole public instead of a small part of the public should be taken into consideration.[50]

Much the same principle was involved in *Illinois Central Railroad Company* v. *Commerce Commission*[51] where the denial by the com-

[47] Ill. Rev. Stat. 1947, Ch. 111⅔, § 8.

[48] 397 Ill. 387, 74 N. E. (2d) 526 (1947).

[49] Ill. Rev. Stat. 1947, Ch. 114, § 48.

[50] 397 Ill. 387 at 395, 74 N. E. (2d) 526 at 530. See also a case bearing identical names and similar facts in 397 Ill. 323, 74 N. E. (2d) 545 (1947).

[51] 395 Ill. 303, 70 N. E. (2d) 64 (1946). Thompson, J., wrote a dissenting opinion.

mission of a petition to abandon a bridge over the railroad was set aside by the court when it found that the continued maintenance of the bridge would be "practically for the sole convenience of the experiment farm operated by the University of Illinois."[52] This, the court concluded was not the *public* convenience and necessity required to support an order of the commission.

The Commission fared no better before the court in the case of *South Suburban Safeway Lines, Inc.* v. *Gold Star Lines.*[53] There, in sum, Gold Star Lines, a public motor bus company, had transferred and assigned certificates of convenience and necessity to Suburban under the terms of contracts approved by the commission. Both the contracts and the commission's orders approving the assignments recited that Gold Star should no longer transport local traffic over the routes in question although it might operate over those routes in connection with its longer hauls. Suburban, claiming that Gold Star had transported local traffic in violation of its contract and of the orders of the commission, filed a complaint before the commission which body, after hearing, ordered Gold Star to cease and desist from such operations. In declaring the order of the commission to be a nullity and setting it aside, the court pointed out that there was nothing in the complaint that indicated "a purpose of having the Commission make Gold Star furnish a more efficient public service. It was limited to the protection of Suburban's rights under the certificate against the alleged transgressions of Gold Star."[54] Under such circumstances, said the court, the power of the commission was limited by Section 75 of the Public Utilities Act[55] to the institution of legal proceedings in court "for the purpose of having such violation . . . stopped . . . either by mandamus or injunction."[56] Any belief that the decision in *Public Utilities Commission* v. *Okaw Valley Mutual Telephone Association*[57] indicated a greater power in the commission was explicitly dispelled.

[52] 395 Ill. 303 at 314, 70 N. E. (2d) 64 at 69.
[53] 397 Ill. 155, 73 N. E. (2d) 407 (1947).
[54] 397 Ill. 155 at 163, 73 N. E. (2d) 407 at 410.
[55] Ill. Rev. Stat. 1947, Ch. 111⅔, § 79.
[56] 397 Ill. 155 at 162, 73 N. E. (2d) 407 at 410.
[57] 282 Ill. 336, 118 N. E. 760 (1918).

TAXATION

The Supreme Court reports for the period of this survey contain the usual cases dealing with objections to tax rates, but they appear to involve merely the application of familiar and well-settled principles to newly arising levies and only serve to impose upon that court the responsibility for finally deciding such questions as whether or not a particular levy is sufficiently specific and itemized, whether a levy for a particular purpose is lawful, or whether or not the tax officials have followed the statutory procedure with sufficient nicety.[58]

The case of *People* v. *Phillips*,[59] deemed worthy of mention, involved an attempt to assess separately certain land and a royalty interest therein under an oil and gas lease under the designation of a "mineral deed." The tax upon the land itself was paid and objection was made to the application of the county collector for judgment for the "mineral deed" tax. In sustaining the objectors, the Supreme Court held that while a mineral deed conveys title to the minerals under Section 7 of the Mining Act[60] and renders the separate mineral estate taxable, an oil and gas lease merely reserves a rental which follows the land. The court further held that such an objector need not, as a condition to filing an objection, pay three-fourths of the tax in accordance with Section 194 of the Revenue Act inasmuch as he comes within the exception there created, *i.e.*, when objection is filed "for any reason other than the real estate is not subject to taxation."[61]

The case of *People* v. *City of Quincy*[62] required an interpretation of Section 19 of the 1939 Revenue Act[63] as it posed the specific question of whether a municipal airport located outside of the

[58] See, for example, People v. C. & N. W. Ry. Co., 397 Ill. 266, 73 N. E. (2d) 418 (1947); People v. N. Y. C. R. R. Co., 397 Ill. 50, 72 N. E. (2d) 821 (1947); People v. Frankenstein & Co., 396 Ill. 524, 72 N. E. (2d) 340 (1947); People v. Riche, 396 Ill. 85, 71 N. E. (2d) 333 (1947); People v. Wabash R. R. Co., 395 Ill. 520, 70 N. E. (2d) 718 (1947); People v. Wabash R. R. Co., 395 Ill. 243, 70 N. E. (2d) 36 (1946).

[59] 394 Ill. 119, 67 N. E. (2d) 281 (1946), noted in 36 Ill. B. J. 93.

[60] Ill. Rev. Stat. 1947, Ch. 94, § 7.

[61] Ibid., Ch. 120, § 675.

[62] 395 Ill. 190, 69 N. E. (2d) 892 (1946).

[63] Ill. Rev. Stat. 1947, Ch. 120, § 500.

municipal limits was exempt thereunder from proper taxation. The facts were stipulated and showed the acquisition by condemnation of a substantial area of land, located approximately ten miles from the city, for use as an airport. The land was paid for by the sale of validly issued municipal bonds and, at the time of the hearing, runways and buildings were being constructed on the property under the sponsorship and direction of, and with funds provided through, the Civil Aeronautics Administration pursuant to a contract obligating the city to operate the land as an airport for the sole use and benefit of the public. Exemption under the statute could have been asserted either through clause 6, relating to property owned by any city or village outside of the corporate limits "if used exclusively for municipal purposes," or through clause 9, concerning market houses, public squares and other public grounds owned by a municipal corporation and "used exclusively for public purposes." Apparently the parties ignored clause 9 and confined themselves to a consideration of whether or not the airport could be brought within the first of these provisions. The opinion of the court, delivered by Justice Smith, took the position that clause 9 was applicable, was decisive of the case, and that the airport was exempt from taxation. Chief Justice Gunn and Justice Murphy, however, concurred specially upon the ground that the property was exempt under clause 6 and that clause 9 was inapplicable.

Examination of the statutory provisions referred to immediately suggests two difficulties in this construction, to-wit: (1) that since clause 6 provides specifically for property outside the corporate limits, the more general language of clause 9 must not have been intended to be applicable thereto, and (2) the doctrine of *noscitur associis,* which would require that the "other public grounds" mentioned must be limited to property similar to "market houses" and "public squares." The court met the first problem rather obliquely by tracing the history of the statute, showing that clause 6 was added by amendment, and inferring therefrom that it was not intended to diminish the scope of the other clause. After a review of authorities, the court concluded as follows:

From the foregoing cases the following rules may be deduced

> as to what constitutes a use for public purposes, within the meaning of paragraph (9) of section 19 of the Revenue Act of 1939; First, if the property is located within the limits of the municipal corporation, and is devoted to the use of the public as represented by the residents of that area, it is being used for public purposes; Second, if the property is located outside the limits of the municipal corporation, it can only be considered as being used for public purposes when it is open on equal terms to use by the public generally, rather than being limited in its use to the inhabitants of the municipal corporation which owns the property.[64]

The justices who concurred specially rejected the application of clause 9 under the doctrine of *noscitur associis,* relying upon *In the Matter of Swigart*[65] and *Roodhouse Water Corporation* v. *Board of Review.*[66] They were of the opinion that the property would be used exclusively for "municipal" as well as "public" purposes so therefore concluded that clause 6 was controlling.

Attorneys who are working with tax rates will find *Anderson* v. *City of Park Ridge*[67] of interest, involving as it does an interpretation by the Supreme Court of section 162a, added in 1945 to the 1939 Revenue Act,[68] as well as certain problems of more general interest. The court had before it an injunction suit by a single taxpayer to enjoin the extension of an illegal tax, together with a request for a declaratory judgment as to the construction and application of the statutory provision in question. The Taxpayers' Federation of Illinois obtained leave to intervene as a party plaintiff before decree. The court held, despite the urgent insistence of the State's Attorney to the contrary, that a court of equity could assume jurisdiction of a suit by a single taxpayer to enjoin the extension or collection of an entire tax levy. The

[64] 395 Ill. 190 at 200, 69 N. E. (2d) 892 at 897.
[65] 123 Ill. 267, 14 N. E. 32 (1887).
[66] 303 Ill. 465, 135 N. E. 708 (1922).
[67] 396 Ill. 235, 72 N. E. (2d) 210 (1947), noted in 36 Ill. B. J. 11.
[68] Ill. Rev. Stat. 1947, Ch. 120, § 643a.

court relied on *Knopf* v. *First National Bank*[69] and *Green* v. *Mail.*[70]

With respect to the request for a declaratory judgment concerning the statutory provisions, the court indicated that such a judgment would be applicable to taxing districts not here involved, although neither such taxing districts nor taxpayers not before the court would be bound by any declaratory judgment which might be entered. The court indicated that granting declaratory judgment in this proceeding would accomplish nothing, for all of the relief which taxpayer claimed could be allowed to her in the injunction proceedings, and such a judgment would have no greater force or effect by virtue of the doctrine of *res judicata* than would the decision of the court by virtue of the doctrine of *stare decisis.*

In *Weil-McLain Company* v. *Collins,*[71] the Illinois Supreme Court approved the constitutionality of the 1945 amendment to Section 6 of the Retailers' Occupation Tax Act[72] and also indicated the application thereof. The effect of the amendment was to require all claims for refund to be made to the Department of Finance and to deprive the courts of jurisdiction of any such claims except by way of review of proceedings had before the department. Formerly, of course, it had been the practice to file claims for refund as an adjunct to an equity suit to restrain the imposition of the tax. In the instant case, prior to the adoption of the amendment, certain plaintiffs had filed suit to enjoin collection of the tax. A decree was entered therein in August, 1944, finding that the original plaintiffs were in the business of selling plumbing and heating supplies and building material to contractors and subcontractors; that as such they were not liable to pay a tax; and that they were entitled to refunds under Section 6 of the statute as it then stood. On July 18, 1945, a similar supplemental decree was entered upon behalf of certain intervenors followed, on November 14th and November 23rd, by similar decrees

[69] 173 Ill. 331, 50 N. E. 660 (1898).
[70] 362 Ill. 518, 200 N. E. 604 (1936). Herrick, J., dissented.
[71] 395 Ill. 503, 71 N. E. (2d) 91 (1947).
[72] Ill. Rev. Stat. 1947, Ch. 120, § 445.

entered in favor of additional intervening plaintiffs. The effective date of the amendment to the statute was July 25, 1945. The court held that the amendment was in all respects valid hence was effective against all persons who intervened in the proceeding after its effective date. It rejected the contention that these intervenors were entitled to enjoy the same rights as those who were parties to the original decree.[73]

TRADE REGULATION

The Illinois legislature, by an act filed July 29, 1947,[74] has made fair trade contracts, heretofore permissible[75] under the Fair Trade Act,[76] into compulsory ones for manufacturers, distributors and importing distributors, at least in connection with their sales through Illinois retailers, of all alcoholic liquor except beer. All such contracts must be filed with the Illinois Liquor Control Commission and that body's consent must be obtained for so-called "close-out" sales or sales at less than the minimum price stipulated in the contracts. While no provision is made for damages resulting from a violation of the contract,[77] the commission is given power to suspend or revoke retail licenses for sales in violation thereof.[78] The act marks an interesting development in governmental regulation. At one time, under the Sherman Act, resale price maintenance contracts were forbidden. Later, under the Miller-Tydings amendment to the Sherman Act, such contracts were permitted but not compelled. The present statute, which probably is permissible under the Miller-Tydings amendment, thus marks a complete reversal in governmental attitude.

The Appellate Court, through the decision in *Good House-*

[73] Attention is invited to the fact that the original proceeding was not a class suit, as has heretofore been the practice in connection with occupational tax litigation in Illinois.

[74] Laws 1947, p. 17, H. B. 755; Ill. Rev. Stat. 1947, Ch. 43, §§ 196-204.

[75] See Old Dearborn Distributing Co. v. Seagram Distillers Corp., 299 U. S. 183, 57 S. Ct. 139, 81 L. Ed. 109 (1936).

[76] Ill. Rev. Stat. 1947, Ch. 121½, § 188 et seq.

[77] Section 2 of the Fair Trade Act, Ill. Rev. Stat. 1947, Ch. 121½, § 189, gives a right of action to any person damaged by sales made or advertised in violation of price maintenance contracts.

[78] Ill. Rev. Stat. 1947, Ch. 43, § 203.

keeping Shops, Inc. v. *Kaye*,[79] has given nourishment to the still young but accepted "Lady Esther doctrine," which holds that a plaintiff may have relief from a defendant who causes confusion in the minds of purchasers as to whether or not certain products are those of the plaintiff even though there is no actual "palming off" of defendant's goods for those of the plaintiff and despite the absence of competition between plaintiff and defendant. Although the court therein denied relief to the plaintiff it was not because of any quarrel with the doctrine but simply because there was no evidence that customers or prospective customers of plaintiff, or the general public, were confused or deceived by the trade names used by defendant.

A real blow, however, was struck at the doctrine by the Circuit Court of Appeals for the Seventh Circuit in the case of *General Industries Company* v. *20 Wacker Drive Building Corporation*[80] where it denied the right of the plaintiff, an Ohio corporation, to enjoin the defendant from forming an Illinois corporation having the same name. The lower court had found that a "likelihood of confusion would arise from the defendant's use of a name practically identical with that of the plaintiff and that the nearly exact identity of the two names would be very confusing to any person dealing in the stock of either corporation and in identifying products produced or to be produced by the two companies."[81] It had, accordingly, granted relief to the plaintiff even though there was no showing of an intention to compete. The higher court reversed and distinguished the Lady Esther case by saying that a secondary meaning had been shown to have been acquired in that case while none was proven in the instant case. For that reason, it said:

> It is not the *use* of similar names that might lead to confusion, it is the *abuse* of such similar names injurious to the plaintiff that may be enjoined. Mere confusion of the public in the

[79] 330 Ill. App. 376, 71 N. E. (2d) 176 (1947). See also Lady Esther, Ltd. v. Lady Esther Corset Shoppe, Inc., 317 Ill. App. 451, 46 N. E. (2d) 165 (1943), noted in 22 CHICAGO-KENT LAW REVIEW 74.

[80] 156 F. (2d) 474 (1946). Lindley, J., dissented in part. Certiorari has been denied: 329 U. S. 833, 67 S. Ct. 370, 91 L. Ed. (adv.) 241 (1946).

[81] 156 F. (2d) 474 at 475.

> use of similar names that are *publici juris* cannot be enjoined by the plaintiff or by any other private individual.[82]

There was, in fact, no finding in the Lady Esther case that the name of the plaintiff had acquired a secondary meaning. The decision rested solely on the existence of confusion. To impinge the secondary meaning rule on what was a clearly enunciated doctrine and in the face of a finding of confusion such as that on which the Lady Esther case was based, not only adds unnecessary, perplexing and detracting appendage to that doctrine but, since it was added by a federal court, is of questionable legality.[83] A dissenting opinion was filed in the instant case, and it has been justly criticized.[84]

CONSTITUTIONAL LAW

Perhaps no case excited more public attention than the decision in *People ex rel. McCollum* v. *Board of Education of School District No. 71*[85] wherein mandamus was denied to a parent who sought to prevent the use of school premises and the expenditure of public funds in the maintenance of classes of religious instruction during regular school hours. The practice of granting "released time" on parental request to permit attendance on religious instruction elsewhere had been upheld in *People ex rel. Latimer* v. *Board of Education of City of Chicago,*[86] despite the objection therein that to do so violated the constitutional provisions respecting freedom of religion. It was there held that as no discrimination was practiced, no particular denomination was favored, and no utilization was made of school facilities, the question boiled down to the simple proposition of the sufficiency of the excuse being granted for absence from school. On that score, it was said that any reasonable regulation of the school authorities on the subject was a matter of no concern to the relator for it violated no aspect of the compulsory attendance law.

[82] 156 F. (2d) 474 at 477.

[83] Erie R. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938).

[84] See note thereon in 41 Ill. L. Rev. 679.

[85] 396 Ill. 14, 71 N. E. (2d) 161 (1947), noted in 35 Ill. B. J. 361.

[86] 394 Ill. 228, 68 N. E. (2d) 305 (1946), noted in 22 Notre Dame Lawyer 360.

The instant decision, however, carried the point still farther for the practice therein disclosed had reached the point where the classes were conducted on the school premises, during regular classroom hours, by teachers not on the regular staff but subject to the supervision of the school superintendent, and involved the service of regular teachers in circularizing the parents of pupils in order to gain the desired consents. The court, however, concluded that as there was no direct compulsion on any student to attend, no violation of Section 3 of Article II of the state constitution had occurred, and the incidental use made of the school premises did not amount to an "appropriation or pay" from any public fund in aid of any church or sectarian purpose such as is forbidden by Section 3 of Article VIII.

It is true that no direct cash contribution was made by the school authorities to the plan for providing religious instruction but the fact remained that if permission had not been granted for the use of the school premises the council in charge of the plan would have been forced to pay for comparable facilities elsewhere. To shrug off that fact by use of the maxim *de minimus non curat lex* hardly comports with the statement of Justice Rutledge that the "realm of religious training and belief remains . . . the kingdom of the individual man and his God. It should be kept inviolably private."[87] As the case is now before the United States Supreme Court there will be opportunity for that body to fix a boundary line on proper state action in a field where feeling may often override judgment.[88]

While the clash between public and private rights may be most dramatic when it occurs in the realm of the personal freedoms, it may be of far deeper significance if less noticeable when it develops in the field of property. For that reason, the decision

[87] See dissent to Everson v. Board of Education of Ewing Township, 330 U. S. 1 at 57-8, 67 S. Ct. 504 at 532, 91 L. Ed. (adv.) 472 at 501 (1947), affirming 133 N. J. L. 350, 44 A. (2d) 333 (1945). That case involved the right of school authorities to reimburse parents for money expended in paying bus transportation to public and also to parochial schools.

[88] It is understood that the decision of the Illinois Supreme Court was reversed, not in the period of this survey, when the United States Supreme Court took jurisdiction of an appeal therefrom: — U. S. —, 68 S. Ct. 461, 92 L. Ed. (adv.) 451 (1948).

in *Northern Illinois Coal Corporation* v. *Medill*[89] should not escape attention. Challenge was directed therein to the constitutionality of the "open cut" or "strip" mining statute adopted in 1943 whereby it was designed to compel mining operators to restore the general contour of the land after mining operations so as to remove the general unsightliness of the spoil ridges created thereby.[90] Effort was made therein to sustain the measure on the ground that it presented a reasonable regulation of private property rights in the interest of public health; would eliminate the possibility of the collection of pools of stagnant water in which noxious insects could breed; would prevent depreciation in the value of adjoining property; and would be a suitable conservation measure, since strip mining, as now practiced, forever destroys the highest and best use to which the land could be put. The entire plan collapsed when both the trial and the Supreme courts declared the statute unconstitutional as a capricious, unreasonable and arbitrary interference with private rights of ownership; capricious because not truly designed to promote public health, unreasonable because limited in application to coal miners and not binding on those who remove other mineral products in a similar fashion, but above all arbitrary because it forced the land owner to restore the soil to a condition suitable to cultivation whereas he might desire to utilize it for reforestation or devote it to grazing.[91]

It is equally important under a dual system of government such as is ours to avoid, wherever possible, any clash between state and federal regulation of business. Conflict may arise, however, for state regulation often proceeds federal control and, upon initiation of the latter, produces a problem as to whether or not the federal regulation does occupy the entire field to the disruption of state plans. Evidence of that difficulty may be observed in

[89] 397 Ill. 98, 72 N. E. (2d) 844 (1947).

[90] Laws 1943, Vol. 1, p. 912; Ill. Rev. Stat. 1947, Ch. 93, § 162 et seq.

[91] The court distinguished the case of Ohio Oil Co. v. Indiana, 177 U. S. 190, 20 S. Ct. 576, 44 L. Ed. 729 (1900), from the one before it on the ground that the conservation measure there involved was designed to prevent waste which would injure adjoining owners as well. The presence of spoil ridges, the court noted, would not prevent an adjoining owner from enjoying his property to the fullest extent.

two important decisions of the United States Supreme Court bearing on local law. In *Rice* v. *Santa Fe Elevator Corporation*[92] the area of conflict developed between state regulation of a public grain elevator under the Illinois Public Utilities Act[93] and federal licensing under the United States Warehouse Act.[94] The litigation was brought about when a local dealer in grain caused proceedings to be instituted before the state commission charging unjust rates, discriminatory practices, failure to provide safe and adequate facilities, operation without state license, and illegal issuance of securities on the part of the elevator corporation. The elevator operator brought suit to enjoin the commission from making an investigation or in any way acting upon the complaint on the ground that Congress, by the 1931 amendment to the federal statute, had indicated a purpose to put complete control of federally licensed warehouses under the sole jurisdiction of the Secretary of Agriculture. The majority of the United States Supreme Court agreed with the elevator proprietor's contention as to all issues except those dealing with the issuance of securities or other financial questions. That ruling was said to be justified, even though there was no declaration of congressional purpose on the point, from the mere fact that, by the 1931 amendment, Congress had repealed the provision permitting the continued operation of state law and had substituted in its stead one giving exclusive jurisdiction over federal licensees to the Secretary of Agriculture in all matters except those relating to financial structure.[95]

The other case, that of *Rice* v. *Board of Trade*,[96] dealt with a similar alleged conflict between the Illinois Public Utilities Act[97] and the federal Commodity Exchange Act,[98] but it was the judg-

[92] 331 U. S. 218, 67 S. Ct. 1146, 91 L. Ed. (adv.) 1043 (1947), noted in 56 Yale L. J. 1265. Frankfurter, J., wrote a dissenting opinion concurred in by Rutledge, J.

[93] Ill. Rev. Stat. 1947, Ch. 114, § 189 et seq.

[94] 7 U. S. C. A. § 241 et seq.

[95] The dissenting justice pointed out that he could find no such intention because there was no substantial increase in appropriation such as would be necessary to provide for the additional labor which would be entailed if federal regulation was to be the sole one and that, in the ensuing years, federal administrative practices had not been changed in the slightest.

[96] 331 U. S. 247, 67 S. Ct. 1160, 91 L. Ed. (adv.) 1058 (1947).

[97] Ill. Rev. Stat. 1947, Ch. 114, § 194b.

[98] 7 U. S. C. A. § 1 et seq.

ment of the court that, in the absence of a provision such as existed in the preceding case, there was no evidence of any intention to have federal law supersede state regulation hence it was proper for the state commission to investigate a complaint that the board of trade was seeking to enforce rules which had not been filed with or approved by the state commission.

A somewhat related conflict between the state and federal governments is revealed in *People ex rel. Woll* v. *Graber*[99] wherein the Illinois Supreme Court, on an original petition for mandamus, ordered the trial judge to expunge an order by which he had forbade the United States District Attorney from acting as the attorney for an individual defendant in a case pending before him. That order had been based on the idea that as no right of the United States government was involved in the proceeding it was improper for the federal official to act in behalf of a private litigant even though that person happened to be a federal employee. It was held that it was not the province of the trial judge but that of the federal Attorney General to determine whether federal interests were at stake[1] and, consequently, a determination by that official to appear was not subject to control by a state court judge.

No person would dispute the right of the legislature to enact legislation providing preferential treatment for honorably discharged veterans in such matters as appointment to or promotion in civil service,[2] but the Supreme Court held, in *People ex rel. Jendrick* v. *Allman,*[3] that the legislature had carried the "special privilege" idea beyond all reasonable constitutional limits when it enacted the 1945 amendment to Section 12 of the Civil Service Act.[4] The petitioner therein sought to compel his reinstatement to the position of patrolman from which he had been discharged by reason of his deliberate understatement of his age. He relied on the fact that the legislature had, through the amendment, removed such conduct as a ground for discharge at least as to all honorably

[99] 394 Ill. 362, 68 N. E. (2d) 750 (1946).
[1] 5 U. S. C. A. § 316.
[2] See People ex rel. Sellers v. Brady, 262 Ill. 578, 105 N. E. 1 (1914).
[3] 396 Ill. 35, 71 N. E. (2d) 44 (1947).
[4] Ill. Rev. Stat. 1945, Ch. 24½, § 51.

discharged veterans. The trial court considered the statute unconstitutional and the Supreme Court affirmed when it found a direct violation of Section 22 of Article IV of the state constitution prohibiting the passage of special legislation. The "reasonableness" of the classification justifying a different treatment for honorably discharged veterans in some civil service matters was said to be lacking in a statute which tended to put a premium on fraud. Of more significance to veterans of World War II, but not involving any particularly new legal points, was the Supreme Court's approval of the Bonus Act authorizing the pledging of the state's credit for the purpose of paying compensation to resident veterans of that war.[5]

CONFLICT OF LAWS

Mention was made last year of the decision of the Illinois Supreme Court in the case of *People ex rel. Jones* v. *Chicago Lloyds*[6] wherein it was held that it was not necessary under the full faith and credit clause for a state court to recognize a default judgment rendered in a sister state subsequent to a decree transferring the property of the judgment debtor to a trustee, even though jurisdiction had been acquired over the judgment debtor in the foreign action prior to the appointment of a statutory liquidator. Upon certiorari granted, a majority of the justices of the United States Supreme Court voted for reversal.[7] They were of the opinion that the foreign judgment was valid and final; that it was not necessary to have control over proof of claims in order to have exclusive jurisdiction of the assets, since the judgment in no way affected the title thereto; that principles applicable to federal bankruptcy proceedings were inapplicable in state liquidation matters; that the foreign court was not bound to respect the local liquidation proceedings unless the existence thereof was

[5] See Routt v. Barrett, 396 Ill. 322, 71 N. E. (2d) 660 (1947). The constitutional issues not already settled by the decision in Hagler v. Small, 307 Ill. 460, 138 N. E. 849 (1923), which dealt with a similar bonus measure after World War I, principally turned on the sufficiency of the ballot under which the proposition was submitted to the electorate.

[6] 391 Ill. 492, 63 N. E. (2d) 479 (1945), noted in 25 CHICAGO-KENT LAW REVIEW 71-2, 46 Col. L. Rev. 479.

[7] 329 U. S. 545, 67 S. Ct. 451, 91 L. Ed. (adv.) 399 (1947). Frankfurter, J., wrote a dissenting opinion concurred in by Justices Black and Rutledge.

called to its attention by way of defense; and that any argument of convenience was outweighed by an equal argument in favor of the foreign creditor and his court which had first acquired jurisdiction over the claim and the parties. The dissenters, on the other hand, believed that it was unfair to allow the foreign creditor to share in the distribution of a common fund not on the basis of a claim established according to a uniform procedure but solely on the basis that he had, in his own state, procured a judgment. Much as that judgment might be binding as to assets located there, it was thought improper to allow it to be asserted against assets accumulated in Illinois under a statute clearly giving notice that, upon insolvency, the property there located was to be made available to claimants only on a prescribed basis.